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RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 23rd August, 1963:—

I

BILL No. XXIII OF 1963

a bill further to amend the Companies Act, 1956.

Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

1. This Act may be called the Companies (Amendment) Act, Short title. 1963.

2. In section 2 of the Companies Act, 1956 (hereinafter referred to as the principal Act), in clause (30), after sub-clause (c), the following shall be inserted, namely:— Amendment of section 2.

“(d) a person in accordance with whose directions the directors of the company or any of them are accustomed to act.”

3. After section 13 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 13A.

“13A. (1) Notwithstanding anything contained in the foregoing provisions of this Act, the memorandum of a company limited by shares or not limited by shares, should state clearly—

(a) the principal and ancillary objects which the company intends at the time of its incorporation to pursue;

(b) and all other objects which are separate from the principal and ancillary ones mentioned in clause (a).

(615)

(2) A company shall not engage itself in any activities within the scope of clause (b) of sub-section (1), unless such activities are sanctioned by a special resolution of the company in a general meeting."

Amendment
of section 67.

4. In section 69 of the principal Act, in sub-section (4), for the words "until the certificate to commence business is obtained under section 149" the words "till the amount stated in the prospectus as the minimum subscription is raised" shall be inserted.

Insertion
of new
section
76A.

5. After section 76 of the principal Act, the following section shall be inserted, namely :—

"76A. (1) Notwithstanding anything contained in section 76 the commission shall not be paid to any person on such shares or debentures as are actually subscribed for at the time of filing of the company's prospectus or statement in lieu of prospectus.

(2) A copy of the contract or agreement for the payment of the commission shall be delivered to the Registrar simultaneously with the filing of prospectus or the statement in lieu of prospectus.

Insertion
of new
section
108A.

6. After section 108 of the principal Act, the following section shall be inserted, namely :—

"108A. (1) Notwithstanding anything contained in section 108, a company shall not register a transfer unless the instrument of transfer is in the prescribed form and the application for the registration of the transfer is made to the company by either the transferor or the transferee within a period of six months from the date of issue of the transfer form as stamped on it in the cases of listed securities and two months in the case of non-listed securities.

(2) The restriction regarding time mentioned in sub-section (1) shall not apply to cases where the shares are held by a company within the ambit of section 49 or where the shares are held in fiduciary capacity or as security by a financial institution provided in cases where the shares are held in fiduciary capacity the shares are in the name of the borrower with a blank transfer executed in favour of the institution as security for the advance."

7. After section 112 of the principal Act, the following sections shall be inserted, namely:—

Insertion
of new
sections
112A and
112B.

"112A. Whoever intentionally makes an application to the company, or otherwise induces the company to allot or transfer its shares in the name of a person whom he knows or has reason to believe to be a fictitious or non-existent person, shall be punishable with imprisonment which may extend to five years and shall also be liable to fine.

112B. Notwithstanding anything contained in the foregoing provisions of this Act, the provisions of section 112A shall be inserted at a prominent place in every prospectus issued by a company and in every form of application for shares issued to any person under the provisions of this Act."

8. After section 203 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
203A.

"203A. The court may disqualify any person from managing a company or from being in any manner associated with the management of a company,—

(i) if he has been convicted of any offence involving fraud or dishonesty whether in connection with a company or not, or

(ii) if he has been persistently in default in complying with the provisions of this Act, or

(iii) if he has been shown to have acted recklessly or incompetently in relation to the affairs of any company of which he is or has been a director or otherwise connected in the management."

9. After section 294 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
294A.

"294A. (1) Notwithstanding anything contained in the provisions of this Act the company shall not pay or be liable to pay its sole selling agent any amount by way of compensation for the loss of office in the following cases:—

(a) where the appointment of sole selling agent ceases to be valid under section 294;

(b) where the sole selling agent resigns his office in view of the reconstruction of the company or on its amalgamation with any other body corporate or bodies corporate and is appointed as a sole selling agent of the constructed company or the body corporate resulting from the amalgamation;

(c) where the sole selling agent resigns his office, otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

(d) where the sole selling agent has been guilty of fraud or breach of trust in relation to or of gross negligence in conduct of his duty as the sole selling agent;

(e) where the sole selling agent has, whether directly or indirectly, himself instigated or has taken part in bringing about the termination of the sole selling agency.

(2) The compensation which may be paid by a company to the sole selling agent for loss of office shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term or for three years whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date of cessation or termination of the office or when he held the office for a lesser period than three years, during such period."

Insertion
of new
sections
308A,
308B,
308C,
308D and
308E

10. After section 308 of the principal Act, the following sections shall be inserted, namely :—

"308A. (1) Notwithstanding anything contained in sections 307 and 308,—

(i) the beneficial owners of five per cent. or more of the equity capital of a company or shares having the right to vote at a general meeting shall notify to the company the extent of their holdings of all such shares;

(ii) the beneficial owners as long as they remain beneficial owners of five per cent. or more of such shares shall notify to the company details of all transactions by them or on their behalf in such shares within fifteen days of such transactions coming to their knowledge.

(2) Notwithstanding anything contained in the foregoing provisions the beneficial owner shall disclose only those shares which are held by him or in trust for him, or those shares of which he has any right to become a holder whether on payment or not.

308B. Any person who wilfully fails to comply with the provisions contained in section 308A, shall be punishable with imprisonment which may extend to five years and shall also be liable to fine.

308C. (1) The company shall maintain a separate register and shall record in it within seven days after notification to it the identity of the shareholders notifying the beneficial interest and the extent of their individual holdings of, and the transactions in, the types of shares referred to in section 308A and the description and amount of such shares.

(2) (i) The company shall keep open the register maintained under sub-section (1) for inspection by the same persons and on the same terms as its register of members is required to be kept open for inspection under the provisions of this Act;

(ii) the company shall make available to the public copies of the separate register maintained under sub-section (1) on the same terms as copies of the register of members are required to be supplied under the provisions of this Act;

(iii) a return of all such disclosures of beneficial interests in holdings of, and transactions in, shares as recorded by the company under sub-section (1) shall be filed by the company with the Registrar of Companies along with its annual return under section 159 of this Act;

(iv) if any person who is entrusted with the maintenance of the register under sub-section (1), wilfully fails to comply with the provisions contained in sub-sections (1) and (2) of this section shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(3) The provisions of section 308A, 308B and 308C shall not affect the operation of section 153.

308D. The provisions of section 308A, 308B and 308C shall not apply to holdings in a private company as defined in this Act.

308E. Notwithstanding anything contained in section 247 of this Act, the Central Government may investigate the ownership of the shares of a company when the Central Government is satisfied that there are circumstances to show that the provisions of section 308A have been deliberately disregarded."

11. After section 370A of the principal Act the following sections shall be inserted, namely:—

"370B. Notwithstanding anything contained in section 370 or 370A,—

Insertion
of new
sections
370B,
370C and
370D.

(i) the lending company shall not give any loan which exceeds twenty per cent. of the subscribed capital and free

reserves of the lending company in respect of loans to companies within the same group;

(ii) the lending company, shall not grant loan under clause (i) without the prior sanction of the shareholders by a resolution.

370C. Notwithstanding anything contained in the foregoing provisions of this Act,—

(i) the aggregate of all the loans that may be granted by a lending company shall not exceed under any circumstances thirty per cent of its paid up capital and free reserves;

(ii) no loan shall be granted by a lending company without the shareholders sanctioning the same by a resolution.

370D. Notwithstanding anything contained in sections 370, 370A, 370B and 370C, the lending company may grant loan in excess of the limits contained in the provisions of sections 370, 370A, 370B and 370C, if the shareholders sanction the proposed loan by a special resolution and if the Central Government approves the said special resolution of the shareholders."

Insertion
of new
sections
395A,
395B,
395C
and
395D.

12. After section 395 of the principal Act, the following sections shall be inserted, namely:—

"395A. (1) Notwithstanding anything contained in section 395, every offer of a scheme or contract under section 395 offering cash or shares to be acquired shall contain a statement by the transferee company explaining the steps it has taken to ensure the availability of necessary cash.

(2) The circulars containing or recommending acceptance of the offer of a contract or scheme shall be sent to the Registrar of Companies for registration before their circulation.

(3) The Registrar shall not register any such circular if he is satisfied that it does not set out the information required to be given under sub-section (1) and under the rules made by Central Government in this behalf, or if the Registrar is of the opinion that that information given is likely to create false impression in any manner.

(4) No company shall proceed with the scheme or contract unless the Registrar registers the same under sub-section (2) of this section.

(5) Any step taken by a company in contravention of the provisions of sub-section (4) will be deemed void.

(6) An appeal shall lie against the order of refusal of the Registrar under sub-section (3) to the High Court within thirty days of the date of the order by the Registrar.

(7) The High Court may confirm the order of the Registrar or reverse the order and direct the Registrar to register the circular.

395B. The Central Government shall have power to frame rules prescribing the information to be disclosed in every offer of a scheme or a contract by a transferee company under section 395A and in every circular containing such an offer or recommendation to the members of the transferor company by the directors to accept such an offer.

395C. Whoever issues a circular or abets the issuing of a circular containing or recommending the acceptance of the offer of a contract or a scheme under sections 395 or 395A wilfully fails to disclose the information required under section 395A or under any rule prescribed by the Central Government in this behalf or wilfully gives or abets the giving of any information which is in any manner likely to create a false impression shall be punishable with an imprisonment which may extend to five years and shall also be liable to fine.

395D. (1) Notwithstanding anything contained in sub-sections (2) and (4) of section 395, the transferor company shall, within a month from the date of registration of the transferee company as holder of the shares of the dissenting share-holders, intimate to them the fact of such registration and the receipt of the amount or other consideration representing the price payable to them by the transferee company and shall forthwith proceed thereafter to pay the money to the dissenting share-holders.

(2) Notwithstanding anything contained in sub-section (1), the dissenting share-holders may, within one month from the date of the registration of the transferee company as holder of the shares of the dissenting share-holders, communicate in writing to the transferee-company expressing their assent to the scheme or contract, and in case of such an assent received by the transferee-company from any dissenting shareholder, the transferee-company shall not be required to pay the money to the dissenting share-holder as required under sub-section (1)."

13. After section 400 of the principal Act the following section shall be inserted, namely:—

"400A. Notwithstanding anything contained in the foregoing provisions of this Act, no court shall pass a final order under

sections 391, 392, 393 and 394, unless the court issues a notice to the Central Government and takes into consideration the representation, if any, submitted by or on behalf of the Central Government."

14. After section 530 of the principal Act, the following section shall be inserted, namely:—

"530A. Notwithstanding anything contained in section 530, in a winding up, tax in respect of the last complete accounting year preceding the liquidation, shall be paid, in preference to all the debts required to be paid under section 530, notwithstanding the fact that the assessment has actually been made subsequent to the commencement of liquidation."

15. After section 550 of the principal Act, the following section shall be inserted, namely:—

"550A. (1) When a company has been amalgamated with another, notwithstanding there being no liquidation, the transferee company, shall preserve the books, and papers of the transferor company for a period of five years from the date of amalgamation.

(2) If any person acts in contravention of the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both."

STATEMENT OF OBJECTS AND REASONS

In the course of the working of the Companies Act, 1956, certain lacunae have come to light. Apart from filling in these lacunae, it is also considered necessary to make modifications in some other provisions of the Act to make the law more effective. Some of the proposed modifications suggested in the Bill are explained below:—

The definition of "officer" has been expanded so as to include in it also persons who though not officers strictly so called may yet wield indirect control over the affairs of the company.

There have been instances where companies have gone in for diversification of, and diversify, their activities into lines other than the principal object or objects ancillary thereto. It seems necessary to specifically provide for the share holders having a say in the matter.

The proposed amendment to amend section 69 of the Companies Act, 1956, so as to prevent any opportunity for companies to obtain a certificate to commence business after filing a statement in lieu of prospectus and thus become free from the obligation to keep the moneys in a Scheduled Bank; when they are received as a result of the prospectus subsequently issued.

Provision is also sought to be made to prevent persons in control of a company making gifts of money to themselves in the shape of under-writing commission at the cost of investing public, even though the under-writing is not exposed to any risk.

A penal provision has been suggested with a view to avoid the practice of allotment of shares in the name of fictitious or non-existing persons.

In the interest of the good and efficient management of a company, it is necessary to empower courts to disqualify certain categories of persons from managing the affairs of the company.

It is necessary to provide remedial measures against evils flowing out of the indiscriminate practice of blank transfers which sometimes facilitate window-dressing of balance sheets by companies by reshuffling of shares held on blank transfers and bringing into existence fictitious or antedated transactions in the books of companies in order to create fictitious losses in the investment for the purpose of reducing the taxable profits. Hence the proposed new sections 308A and 308E.

It is necessary that transactions under section 370 of the Companies Act, 1956 (losses etc. to companies under the same management) should receive the approval of the Central Government. Inter-company loans should rank at par with inter-company investment in the matter of obtaining the approval of the Central Government. Hence the proposed new sub-sections 370B, 370C and 370D.

Effective measures are necessary to ensure that adequate information is disclosed to the share holders in a take over so that they would be in a position to judge for themselves whether or not to accept the Hence the proposed new sub-sections 370B, 370C and 370D.

Before the court passes a final order, on an application made under sections 391 to 394, the Central Government should be given a reasonable opportunity to make any representation it may deem necessary and such representation should be taken into consideration by the court before a final order is passed. For this purpose, new section 400A has been proposed to achieve this.

Effective provision to secure the recovery of tax from companies in liquidation is necessary. Hence new section 530A.

Where a company is amalgamated with another company without going into liquidation, the books and documents of the former must be preserved. There is no provision in the Act providing this at present. The proposed new section 550A seeks to remove this lacuna.

K. V. RAGHUNATHA REDDY.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill empowers the Central Government to frame rules prescribing the information to be disclosed in every offer of a scheme or a contract by a transferee company under proposed section 395A and in every circular containing such an offer or recommendation to the members of the transferor company by the directors to accept such an offer. This provides for a necessary safeguard in respect of transfers. The power delegated to the Central Government is therefore of a normal character.

II

Bill No. XXVI of 1963

a bill further to amend the Delhi Rent Control Act, 1958.

Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short title. 1. This Act may be called the Delhi Rent Control (Amendment) Act, 1963.

Amendment of section 14. 2. In section 14 of the principal Act, in sub-section (1),—
(i) after clause (d) the following clause shall be inserted, namely:—

“(dd) that the premises which have been let for non-residential purpose have not been used by the tenant without reasonable excuse for the purpose for which they were let for a continued period of four months preceding the date of the filing of the application for recovery of possession;”;

(ii) for clause (h), the following shall be substituted, namely:—

“(h) that the tenant or any member of his family dependent on him or residing with him has, whether before or

after the commencement of this Act, built, acquired vacant possession of, or been allotted, a residence;

(hh) that the tenant has been in continuous occupation of any residential premises, of which the rent is rupees one hundred or more per month. for a period exceeding twenty-one years;

Explanation.—For the purposes of clause (hh) references to residential premises shall mean any premises suitable for occupation as a residence irrespective of the purpose for which it is or has been let, whether for use as residence or for use as residence-cum-business or residence-cum-profession, and also includes premises let out for the purposes of a public hospital, an educational institution, a public library, a reading room or an orphanage;”;

(iii) after clause (j) the following shall be inserted, namely:—

“(jj) that the tenant has, whether before or after the commencement of this Act, without the consent of the landlord in writing or of the Municipal Corporation of Delhi or of the New Delhi Municipal Committee, as the case may be, erected any structure or suffered to be erected any structure on the premises;

(jjj) that the tenant or any person residing with the tenant has been guilty of conduct amounting to causing annoyance to the occupiers of the adjoining or neighbouring premises or has been using the premises or allowing the premises to be used for immoral or illegal purposes;”.

3. To section 23 of the principal Act, the following proviso shall be added, namely:—

Amendment of section 23.

“Provided that no residential building shall be converted into non-residential building except with the permission in writing of the Controller.”

4. In section 38 of the principal Act, for sub-section (1), the following shall be substituted, namely:—

Amendment of section 38.

“38. (1) Notwithstanding anything contained in any other law, an appeal shall lie from an order made by the Controller to a tribunal of two judges.”

Insertion
of new
section
54A

5. After section 54 of the principal Act, the following section shall be inserted, namely:—

Exemptions.

“54A. Notwithstanding anything contained in this Act, the Central Government or the Chief Commissioner of Delhi may direct that all or any of the provisions of this Act shall not apply to any particular building or class of building.”

STATEMENT OF OBJECTS AND REASONS

In the course of the administration of the Delhi Rent Control Act, 1958 it has been found that the Act contains certain lacunae, specially in regard to the provisions in respect of the recovery of possession by the landlords of the premises. This Bill seeks to fill in these lacunae and remedy certain other defects and bring it in line with the Rent Control Acts of other States.

M. P. BHARGAVA.

III

Bill No. XXII of 1963

a bill further to amend the Capital Issues (Control) Act, 1947.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short title. 1. This Act may be called the Capital Issues (Control) Amendment Act, 1963.

Insertion of new section 6A. 2. After section 6 of the Capital Issues (Control) Act, 1947, the following shall be inserted, namely:— 29 of 1947.

“6A (1) If the directors of a company propose to engage in new activities other than those authorised to be engaged in the first instance, the sanction of the company in a general meeting by a special resolution shall be obtained before engaging in such new activities.

(2) A copy of every special resolution sanctioning new activities shall be forwarded to such officer as the Central Government may appoint in this behalf.”

STATEMENT OF OBJECTS AND REASONS

In cases where the directors of a company propose to engage in new activities other than those authorised at the time of forming the company initially, it seems necessary in the interest of the shareholders to make it obligatory to obtain sanction of the company in a general meeting by a special resolution before the company engages in such new activities. It is also necessary to lay down a further obligation on the company that in every case of engagement in new activity due intimation should be given to the Central Government so that Government may call for necessary information and take appropriate steps to protect the interests of the investing public wherever necessary.

The Bill seeks to make provision accordingly.

K. V. RAGHUNATHA REDDY.

IV

Bill No. XI of 1963

a bill further to amend the Code of Criminal Procedure, 1898.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1963.

Amend-
ment of
section
145.

2. In section 145 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the principal Act), in the second proviso to sub-section (4), for the words "before the date of such order" the words "from the date when the petition was presented" shall be substituted.

Amend-
ment of
section
161.

3. In section 161 of the principal Act, for sub-section (3) the following shall be substituted, namely:—

"(3) The police officer shall reduce into writing any statement made to him in the course of an examination under this section and he shall make a separate record of the statement, of each such person whose statement he records and shall forthwith send the copies of the statements so recorded to the Magistrate having jurisdiction to enquire into the case."

4. In section 162 of the principal Act, in the proviso to sub-section (1), after the words "may be used by the accused", the words "to cross-examine such a witness" shall be inserted.

Amendment of section 162.

5. In section 175 of the principal Act, in sub-section (1), after the word "forfeiture" the words "and the police officer shall reduce into writing the statements of the witness so examined by him and shall send the copies of the statements forthwith to the Magistrate having jurisdiction to enquire into the case" shall be inserted.

Amendment of section 175.

6. After section 175 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 175A.

"175A. If the police officer fails to send the statements recorded under sub-section (3) of section 161, or under sub-section (1) of section 175, the court shall presume that the statements were not in existence at the time when the statements were said to have been recorded or, even if they were in existence they were not in the same form as might have been found later."

Failure to send written statements.

7. After section 240 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 240A.

"240A. Wherever the parties are prosecuted for attack on each other in the same occurrence and where there are counter cases the trials in both the cases shall be held separately one after another by the same Judge or Magistrate, as the case may be, and no judgement shall be pronounced till after both the cases are heard; and on an appeal or a revision petition, if any, against the judgement of the trial court, the same procedure shall obtain in the appellate court.

8. After section 417 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 417A.

"417A. In all cases of conviction, from the judgement of a single Judge, an appeal shall lie to a Division Court of the High Court composed of not less than two Judges, as to the legality, correctness or propriety of the said judgement, provided that the said Division Court grants special leave to appeal against such judgement.

Appeal against conviction.

9. After section 423 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 423A.

"423A. In case of an appeal under section 417A, the High Court may confirm or revise the findings and sentence or acquit or discharge the accused or order a retrial."

Power of High Court.

Amend-
ment of
section
430.

10. In section 430 of the principal Act, after the words and figures "in section 417" the words and figures "and section 417A" shall be inserted.

Amend-
ment of
section
431.

11. Section 431 of the principal Act shall be renumbered as sub-section (1) thereof, and—

(i) in the sub-section as so renumbered, after the words "except an appeal from a sentence of fine" the words and figures "and an appeal under section 417" shall be inserted;

(ii) after the section as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) On the death of the appellant, an appeal under sub-section (3) of section 417 may be prosecuted by any aggrieved person with the permission of the court to which an appeal lies."

Amend-
ment of
section
492.

12. In section 492 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Notwithstanding anything contained in sub-section (1), the State Government shall not appoint a person who is a police officer or a full-time paid legal adviser to the Police Department in the service of the said Government as a public prosecutor.

Amend-
ment of
section
495.

13. In section 495 of the principal Act, in sub-section (1), the words "below a rank to be prescribed by the State Government in this behalf" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Bill seeks to remove certain lacunae in the Code of Criminal Procedure, 1898. There have been conflicting judicial pronouncements in regard to certain provisions of the Code, and in some cases the existing law is found inadequate. Hence the proposed amendments.

K. V. RAGHUNATHA REDDY, M.P.

V

Bill No. XIX of 1963

a bill further to amend the Representation of the People Act, 1951

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short title. 1. This Act may be called the Representation of the People (Amendment) Act, 1963.

Amendment of section 7. 2. In section 7 of the Representation of the People Act, 1951 (hereinafter referred to as the principal Act), for clause (d), the following shall be substituted, namely:—

“(d) if there subsists a contract entered into in the course of his trade or business, by him, or by a partnership firm of which he is a partner, or by a private or public company of which he is the chairman, or the secretary, or a director, or an officer, with the State or the Central Government or with any business or commercial or industrial enterprise, in which the State or the Central Government owns not less than fifty per cent. of the shares, for the supply of goods to, or for the execution of any works undertaken by, the State or the Central Government or such business or commercial or industrial enterprise, in which, the State or the Central Government owns not less than fifty per cent. of the shares.”

3. In section 83 of the principal Act, in clause (b), after the words "such practice" the words "as would enable a person to answer the allegation of corrupt practice made against him" shall be inserted.

Amendment
of section
83.

4. In section 90 of the principal Act,—

Amendment
of section
90.

(i) after sub-section (3), the following shall be inserted, namely:—

"(3A) Notwithstanding anything contained in the provisions of this Act, the Election Tribunal shall strike off the allegations of corrupt practice, if, in the opinion of the Tribunal, the particulars of corrupt practice contained in the petition are so vague that the respondent will not be able to answer them, or if the affidavit in the prescribed form in support of the allegations of the corrupt practices is not filed along with the petition."

(ii) after sub-section (5), the following Explanation shall be inserted, namely:—

Explanation.—For the purposes of this sub-section, the expression "particulars of any corrupt practice" means particulars of an instance or instances of any corrupt practice.

Illustration.—A, the petitioner, alleged that B, the elected candidate, gave Rs. 200 as bribe to C in the village X on 19th February, 1962 at 8-30 A.M. The tribunal may allow further particulars such as that money was paid in currency notes and they were of ten rupee denomination. But the tribunal cannot allow A to amend his petition to say that B also bribed D if A had not already alleged this in his original petition."

5. After section 97 of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
97A

"97A. At any stage of the trial of an election petition, the tribunal may recount the votes if the Tribunal is satisfied that such recount of votes is necessary and just."

6. After section 136 of the principal Act, the following sections shall be inserted, namely:—

Insertion of
new sections
136 A and
136 B

"136A. A person is said to make false allegation of corrupt practice who, in an election petition or in a petition under section 97, makes an allegation of a corrupt practice which he knows or believes to be false, or does not believe to be true.

STATEMENT OF OBJECTS AND REASONS

As the sphere of governmental activity is extending to various public industrial and commercial undertakings, it seems proper to include also contracts with public undertakings within the scope of clause (d) of section 7 of the Representation of the People Act, 1951. Hence the proposed amendment to clause (d) of section 7.

Though it is required that a petitioner in an election petition should give particulars of corrupt practices, in practice only a corrupt practice is alleged and later on the petitioner seeks to supply particulars by way of amendments to the election petition. This gives scope for concoction of evidence at a later stage. It is, therefore, necessary to make it obligatory on the part of the petitioner to give particulars in the election petition itself at the time of filing it. Hence the proposed amendment to clause (b) of section 83.

If the affidavit which is provided for under section 83 as a measure of protection against reckless allegations being made is not filed along with the petition, the allegations of corrupt practice should be struck off and no opportunity need be given to a petitioner to file the affidavit, as it might encourage fabrication of evidence. Hence the proposed new sub-section (3A) in section 90.

In many cases of election petitions, a petitioner merely alleges one or some of the grounds of corrupt practices mentioned in section 123 at the time of filing the petition and seeks to give instances of the same by way of an amendment of the petition under clause (5) of section 90. This seems an unsatisfactory position and can be remedied by clearly defining corrupt practice to mean instances of corrupt practice. Hence the proposed explanation to clause (5) of section 90.

Though tribunals are ordering recount, exercising power under section 100, there is no specific provision in the Representation of the People Act, 1951, empowering a tribunal to order recount of votes. Hence the proposed new section 97A.

If any petitioner in an election petition or recrimination petition wilfully makes a false allegation of corrupt practice he must do so at his own risk of being punished. Hence the proposed new sections 136A and 136B.

K. V. RAGHUNATHA REDDY.

Explanation.—An allegation is within the meaning of this section whether it is made verbally or otherwise.

136B. Whoever intentionally makes a false allegation of corrupt practice either in an election petition or in a petition under section 97 at any stage of the trial of the election petition against the successful candidate for the purpose of getting his election set aside or making any person disqualified under section 140 shall be punishable with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine."

VI

Bill No. XVI of 1963

a bill to amend the All-India Services Act, 1951

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short title and commencement. 1. (1) This Act may be called the All-India Services (Amendment) Act, 1963.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Insertion of new section 3A. 2. After section 3 of the All-India Services Act, 1951, the following new section shall be inserted, namely:—

Members of All-India Services not to accept certain appointments after retirement.

“3A. (1) Notwithstanding anything contained in this Act, a member of any of the All-India services, including the Indian Civil Service, shall not, after retirement from such service, accept employment in any capacity, either honorary or otherwise, in a company or firm which is owned, controlled or managed, wholly or partly, by a private individual or body of such individuals.

(2) Any infringement of the provision contained in this section shall be punishable with imprisonment which may extend to five years or with fine which may extend to rupees ten thousand or with both.”

STATEMENT OF OBJECTS AND REASONS

There is a growing tendency, of late, on the part of senior Government officials to join private firms or companies on lucrative remuneration after retirement. These individuals having held key positions in the Government, are in a position to influence the administration and obtain discriminatory favours and valuable inside information for the benefit of the concerns which they are serving. This practice of men in high places, who, in the course of their official career come into contact with big business, being lured away into private employment, has a deleterious effect on public opinion. Hence the need for a prohibitory and penal measure to check such practice.

This Bill seeks to amend the All-India Services Act, 1951, for the purpose.

A. M. TARIQ.

VII

Bill No. XXVII of 1963

a bill further to amend the Constitution of India.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short title 1. This Act may be called the Constitution (Amendment) Act, 1963.

Amendment of article 143. 2. In article 143 of the Constitution, after clause (2), the following clause shall be inserted, namely:—

“(3) The Supreme Court or any Judge of the Supreme Court shall not be called upon to tender any opinion or give any advice except as provided in this article.”

STATEMENT OF OBJECTS AND REASONS

Article 143 of the Constitution provides that if at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to the Supreme Court for opinion. He may also refer a dispute of the kind mentioned in the proviso to article 131 of the Constitution to the Supreme Court for opinion. But recently, there has been a case where the opinion of a Judge of the Supreme Court was asked for on a matter which is extraneous to, and not contemplated in, the said articles. Such practice is not permitted by the Constitution and seems derogatory to the dignity and independence of the Court, and should be prohibited. Hence this Bill.

A. D. MANI.

VIII

Bill No. XVII of 1963

a bill to constitute a fund for the financing of activities to promote the welfare of unemployed or retired and indigent film artistes and other employees by providing unemployment relief.

WHEREAS it is expedient to constitute a fund for financing the activities to promote the welfare of unemployed or retired and indigent film artistes and other employees by providing unemployment relief,—

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short
title and
commence-
ment.

1. (1) This Act may be called the Film Artistes' Welfare Fund Act, 1963.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Defini-
tions and
inter-
preta-
tions.

2. In this Act, unless the context otherwise requires:—

(a) "employers" include producers, directors, distributors, studio-owners and any other person who is engaged in, or has an interest in, the production of a film;

(b) "film artiste" means an artiste engaged to play any role in a feature film;

(c) "other employees" include technicians, assistants to cameraman, assistants to editors, assistant directors, sound recordists and assistants to sound recordists and any other category of persons employed in a film industry.

3. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, there shall be levied and collected a fee for the purposes of this Act on the earnings of all incomes of the film artistes, other employees and employers at such rate, not exceeding one per cent. in the case of film artistes and other employees and two per cent. in the case of employers, as may, from time to time, be fixed by the Central Government.

Imposition and collection of a compulsory contribution for the welfare of film artistes.

(2) On the last day of each month or as soon thereafter or at the time of payment, whether in part or in full, of the remuneration of the film artistes or other employees, as may be convenient, there shall be paid to the credit of a fund to be known as the Film Artistes Welfare Fund (hereinafter referred to as the Fund) the proceeds of the fees after deduction of the expenses, if any, for collection and recovery.

4. (1) The Fund shall be applied by the Central Government to meet the expenditure incurred in connection with measures which are, in the opinion of the Central Government necessary or expedient to promote the welfare or provide for relief of film artistes and other employees who have either retired or are unemployed and are in indigent circumstances or to the deserving legal heirs of the film artistes and other employees who might have died while engaged in the production of the feature film in any capacity, or, if unemployed, in a destitute condition.

The film Artistes Welfare Fund.

(2) Without prejudice to the generality of sub-section (1), the Fund may be utilised to defray—

(i) the cost of measures for the benefit of film artistes and other employees who have either retired or are unemployed and are in indigent circumstances;

(ii) monetary help to such film artistes or other employees, who may be temporarily unemployed, till their re-employment or for a fixed period, as the nature of each case requires;

(iii) the cost of provision of such other measures as the Central Government may think fit for the amelioration of the social conditions of film artistes and other employees;

(iv) the cost of administering the Fund, including the allowances, if any, of members of the Advisory Committee constituted under section 5, and salaries and allowances, if any, of officers appointed under section 6;

(v) any other expenditure which the Central Government may direct to be defrayed from the Fund.

(3) The Central Government shall have power to decide whether any particular expenditure is or is not debitable to the Fund and its decision shall be final.

(4) The Central Government shall publish annually in the Official Gazette a report of the activities financed from the Fund, together with an estimate of the receipts and expenditure of the Fund and a statement of accounts.

Advisory Committee. 5. (1) The Central Government shall constitute an Advisory Committee to advise the Central Government on any matters arising out of the administration of this Act or the Fund.

(2) The members of the Advisory Committee shall be appointed by the Central Government and shall be of such number and chosen in such manner as may be prescribed by rules under this Act:

Provided that the Committee shall include an equal number of members representing film artistes, other employees and the employers, and one member from the Council of States and two members from the House of the People.

(3) The Chairman of the Advisory Committee shall be appointed by the Central Government.

(4) The Central Government shall publish in the Official Gazette the names of all the members of the Advisory Committee.

Appoint-
ment of
Officers
to ad-
minister
the Fund. 6. (1) The Central Government may appoint such officers as it thinks necessary to administer the Fund or to supervise or carry out the activities financed from the Fund.

(2) Every Officer so appointed shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

(3) Any Officer so appointed, if authorised in this behalf, may, with such assistance as he thinks fit—

(i) enter at any reasonable time any place which he considers it necessary to enter for the purpose of supervising or carrying out the activities financed from the Fund, and

(ii) do within such place anything necessary for the proper discharge of his duties.

Power to
make
rules. 7. (1) The Central Government may, by notification in the Official Gazette, make rules to carry into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for—

(a) making of recoveries, refunds and remissions of fees imposed by sub-section (1) of section 3;

(b) the composition of the Advisory Committee constituted under section 5, the manner in which the members thereof shall be chosen, the term of office of such members, the allowances, if any, payable to them, and the manner in which the Advisory Committee shall conduct its business;

(c) the conditions governing the grant of money from the Fund under section 4;

(d) the form of the estimate and statement referred to in sub-section (4) of section 4;

(e) the conditions of service and duties of all officers appointed under section 6;

(f) the furnishing by employers, film artistes and other employees of information required for the purposes of this Act and punishment by fine for failure to comply with the requirement of any rule made under this clause.

STATEMENT OF OBJECTS AND REASONS

Instances of erstwhile popular film artistes falling upon hard times and spending their last days of life in acute poverty with no means of livelihood have become very common. These artistes who dedicate their prime of life to the cause of the film industry are entitled to a fair deal and a measure of sympathy from the society, and in any case from their own fraternity. It would not be unreasonable to expect the film artistes and producers to contribute a small percentage of their earnings for the benefit of these destitute stars of yesteryear. It is, therefore, proposed that a Fund to be called the Film Artistes Welfare Fund may be constituted to which all such contributions would be credited and from which disbursements would be made for the welfare of the film artistes and other persons employed in the film industry. This Bill seeks to implement this proposal.

A. M. TARIQ.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Film Artistes' Welfare Fund Bill, 1963, proposes to empower the Central Government to make rules to carry into effect the purposes of the Act. The matters with respect to which rules are to be made are of a routine nature and the delegation of legislative power is of a normal character.

IX

Bill No. X of 1963

a bill to codify the law relating to treason.

BE it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Treason Act, 1963.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification, in the Official Gazette, appoint.

Extension of
Act to extra
territorial
offences.

2. The provisions of this Act apply also to any offence committed by—

(i) any citizen of India in any place without and beyond India;

(ii) any person on any ship or aircraft registered in India wherever it may be.

Explanation.—In this section, the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Act.

Definitions.

3. In this Act, unless the context otherwise requires,—

(a) “misprision of treason” means the concealment of a conspiracy to commit treason or a treasonable act.

(b) "treason" means any act contrary to the interest of the Union of India and likely to bring the Union of India into hatred and contempt or likely or intended to convey information to a foreign power injurious to the interest of India or in aid of the enemies of India or giving comfort to them;

(c) "treasonable act" means an overt act, whether by writing or insinuation, by cartoon or by any other graphic manner, designed to bring the Union of India into hatred or contempt or to give sustenance to any foreign power by ridiculing the efforts of the Government of India in the matter of India's security or insulting the flag of India or trading with the enemy.

4. Whoever commits treason shall be punished with death, or with imprisonment for life and loss of citizenship. All properties owned by him shall be forfeited to the State. Punishment for treason.

5. Whoever commits a treasonable act shall be punished with rigorous imprisonment which may extend to ten years and shall also be liable to forfeiture of all property owned by him; and all goods, implements, organs, tools, documents, machinery, etc., and any building that might have been used in the commission of such act shall be forfeited to the State. Punishment for treasonable acts.

6. Whoever commits a misprison of treason shall be punished with rigorous imprisonment which may extend to five years and shall also be liable to fine. Punishment for misprison of treason.

7. Notwithstanding anything contained in any law for the time being in force, all offences under this Act shall be cognizable. Offences to be cognizable.

STATEMENT OF OBJECTS AND REASONS

There is no law existing today in India dealing with acts of treason or treasonable acts or misprision of treason as such. This is a lacuna which should not be allowed to continue in the changed circumstances of today. This Bill is accordingly being introduced, defining treason, a treasonable act and misprision of treason and making provision for appropriate punishment of persons found guilty under the provisions of this measure.

DIWAN CHAMAN LALL.

S. N. MUKERJEE,
Secretary.